

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 08-E-0053

**In the Matter of the Liquidation of
Noble Trust Company**

**LIQUIDATOR'S MOTION AND INCORPORATED
SUPPORTING MEMORANDUM FOR APPROVAL OF
SETTLEMENT AND RELEASE AGREEMENT WITH
PENN MUTUAL LIFE INSURANCE COMPANY**

Glenn A. Perlow, Bank Commissioner for the State of New Hampshire, in his capacity as Liquidator of Noble Trust Company (the "Liquidator" and "Noble Trust," respectively), by his attorneys, the Office of the Attorney General and Sheehan Phinney Bass + Green, Professional Association, moves for the entry of an order approving the Settlement and Release Agreement dated as of July 17, 2015 (the "Settlement Agreement")¹ by and between the Liquidator and Penn Mutual Life Insurance Company ("Penn Mutual"). This Motion is supported by the Affidavit of Robert A. Fleury dated July 27, 2015 (the "Fleury Affidavit"). In support of this motion, the Liquidator states as follows:

¹ In accordance with the Liquidator's Assented-To Motion to Approve Notice and Objection Procedures for Hearing on Motion and Incorporated Supporting Memorandum for Approval of Settlement Agreement and Release with Penn Mutual Life Insurance Company and this Court's Order Establishing Settlement Agreement Review Procedures dated December 5, 2012, a redacted copy of the Settlement Agreement is attached hereto as Exhibit A. Parties wishing to review the unredacted Settlement Agreement may do so by contacting the Office of the Liquidator and following the Court approved procedures, including the execution of a confidentiality agreement. To the extent the redactions are of personal identifying information that an individual has requested be kept confidential, the Liquidator will not reveal such information without authorization from the particular individual or further order of the Court.

Background

1. In 2003, Noble Trust was organized and chartered under the laws of the State of New Hampshire as a non-depository banking corporation, and subject to regulation by the New Hampshire Banking Department (the "Banking Department"). Colin P. Lindsey ("Lindsey") was the president of Noble Trust and chairman of its board of directors.

2. As a result of irregularities discovered by the Banking Department's 2008 examination of Noble Trust, on February 11, 2008, Commissioner Peter Hildreth commenced a liquidation proceeding by filing a Verified Petition for Liquidation (the "Liquidation Petition") in this Court, seeking the appointment of a liquidator for Noble Trust pursuant to RSA 395:1, as well as related injunctive relief against Noble Trust pending this Court's ruling on the Liquidation Petition (the "Liquidation Proceeding").

3. On March 27, 2008, this Court entered an order (the "Liquidation Order") appointing Commissioner Hildreth as liquidator of both Noble Trust and its parent company, Aegean Scotia Holdings, LLC ("Aegean Scotia"). The Liquidator is the duly appointed successor liquidator of Noble Trust and Aegean Scotia by order of this Court dated February 1, 2013.

4. Prior to the commencement of the Liquidation Proceeding, Penn Mutual issued five life insurance policies (collectively the "Policies") to individuals reflected in Noble Trust's books and records as Noble Trust clients: (1) number 8189442 date December 28, 2006 on the life of Anthony N. Sica; the record owner of this policy is the Anthony Sica Irrevocable Trust as to which Noble Trust was Trustee; (2) number 8191171 date May 11, 2007 on the life of Lupe Ruiz; the record owner of this policy is the Lupe Ruiz ILIT as to which Noble Trust was Trustee; (3) number 8192490 date May 11, 2007 on the life of Harry O. Baker, Sr.; the record owner of this policy is the Harry Baker Irrevocable Trust as to which Noble Trust was Trustee; (4) number

8190743 date March 21, 2007 on the life of Joy V. Kolb; the record owner of this policy is the Joy Kolb Irrevocable Trust as to which Noble Trust was Trustee; and (5) number 8190826 date February 2, 2007 on the life of Sadie E. Bass; the record owner of this policy is the Sadie Bass Irrevocable Trust as to which Noble Trust was Trustee.² Noble Trust paid or caused to be paid to Penn Mutual premiums in the amount of approximately \$2,315,700.00 on account of the Policies. Fleury Affidavit ¶ 3. The premiums for the Policies were substantially financed by means of loans from trusts established for Noble Trust investors as to which Noble Trust served as trustee, trust protector and/or trust administrator. Id.

5. The records of Penn Mutual further indicate that Penn Mutual paid \$2,083,959.00 in commissions in connection with its issuance of the Policies. Fleury Affidavit ¶ 4.

6. The Liquidator contends that the Policies are part of the liquidation estate being administered by the Liquidator pursuant to the Plan (defined below) and Liquidation Order because, among other things, Noble Trust is trustee of the above described Trusts, which are the record owners of the Policies.³ As Trustee, Noble Trust holds legal title to the Policies. The Liquidator also asserts an interest in the Policies because the procurement and issuance of the Policies and other life insurance policies procured by Noble Trust was a critical part of the fuel that permitted Lindsey to perpetuate the Noble Trust Ponzi scheme. Penn Mutual and other issuers of life insurance policies paid substantial commissions directly or indirectly to Lindsey or entities controlled by him that some of which Noble Trust then distributed to existing investors

² The Sica, Ruiz and Baker Policies were the result of referrals made to Noble Trust by Gerald Marino (“Marino”), a real estate broker that resided in Florida. The procurement and issuance of policies on the individuals referred to Noble Trust by Marino led to, among other things, criminal investigations concerning Lindsey and Marino by the Federal Bureau of Investigation, the United States Attorney for the District of New Hampshire, and the New Hampshire Attorney General. Marino entered into a Plea Agreement and was sentenced to prison as a result of these investigations. For a more detailed description of Marino’s involvement in the procurement of fraudulent life insurance policies in the Noble Trust scheme, the Liquidator incorporates the discussion of the Marino Policies that was set forth in the Liquidator’s Motion for Approval of Settlement and Release Agreement with PHL Variable Insurance Company that was filed on December 17, 2008 and approved by this Court on July 7, 2009.

³ See Schedules A and B of the Settlement Agreement for a detailed description of the Trusts and Policies.

as fictitious profits. Noble Trust also used the commission income to help fund the premiums to procure other fraudulently procured life insurance policies, thereby perpetuating the Noble Trust Ponzi scheme. Fleury Affidavit ¶ 5.

The Noble Trust Ponzi Scheme

7. Lindsey was operating Noble Trust as a Ponzi scheme at the time that the Policies were issued. Between the time when Noble Trust sustained its undisclosed losses due to the Sierra Investments and the time when the Liquidator took control of Noble Trust (March 2008), Noble Trust continued to solicit and accept funds from clients totaling at least \$4.5 million under the same promise of 12% returns that had been made to existing clients. Fleury Affidavit ¶ 6. Instead of investing the new clients' money in legitimate investments, however, Noble Trust used some of these funds to pay fictitious profits to other clients and to redeem principal and pay interest to clients who terminated their relationship with Noble Trust. Id. However, the flow of incoming investments was insufficient for Lindsey and Noble Trust to maintain the concealment of the Sierra Investment losses. Id.

8. To continue the fraudulent concealment of its losses and perpetuate the Noble Trust Ponzi scheme, Lindsey devised and carried out a plan based upon the procurement and issuance of life insurance policies for the elderly, generally with face values between \$3 million and \$10 million. Fleury Affidavit ¶ 7. At Lindsey's direction, Noble Trust, acting as trustee or trust protector, caused applications to be submitted to various insurers, including Penn Mutual. Many of the applications misrepresented the applicants' net worth or income, or averred that coverage was being sought as a means of individual estate planning. Id. Many of the insurance policy applications misstated the source of the premium financing, the terms of the premium financing, or both. Id. In reality, many of the individual insureds were persuaded to apply for insurance in part through promises of profits from the sale of their policies on the lucrative

secondary market after the contestability period expired. Id. These insureds had little or no expectation that either they, or any other person with an insurable interest in their lives, would ever receive any death benefit from the policies. Id.

9. In most cases, once the policies were procured and issued, the insureds were not required to pay *any* premiums to keep the policies in force through the end of the two-year contestability period. Fleury Affidavit ¶ 8. Instead, the premiums were paid on their behalf by means of limited-recourse premium financing loans (the "Premium Finance Loans"). Neither the insured nor any other individual had liability for repayment of the Premium Finance Loans; recourse was limited to the insurance trust, the sole asset of which was the life insurance policy. Id. The Premium Finance Loans were often funded by other Noble Trust clients and their trusts, investment management accounts or individual retirement accounts. Id. Thus, the insureds under the policies were promised and received "something for nothing" – they paid no premiums, incurred no personal liability for the Premium Finance Loans, and were promised large windfalls for selling their policies after the contestability period expired.

10. In most instances, when the policies were placed in force, Lindsey or Balcarres were paid substantial commissions (the "Commissions") directly by the insurers or indirectly by the agents and producers that submitted the policy application. Fleury Affidavit ¶ 9. The Commissions were often equal to or greater than the first year annual premium for the policies. Some of the proceeds of the Commissions were used to fund premium payments for other policies or to repay other Premium Finance Loans. Other proceeds of the Commissions were used to cover up the loss of the Sierra Investments through distributions of fictitious profits or the repayment of principal to Noble Trust clients who had invested in Sierra, thus making it appear that the Sierra Investments were still performing according to their terms. Id. Upon information and belief, Lindsey and Noble Trust also intended to sell some of the policies (or the

beneficial interests therein) on the lucrative secondary market to perpetuate the Noble Trust Ponzi scheme and continue to cover up the Sierra losses. Id.

11. The Policies fit the model described above. The holders of the Policies paid nothing to procure them. Fleury Affidavit ¶ 10. The premiums were funded by loans from the accounts of other Noble Trust investors. Id. The loans are without recourse to the holders of the Policies.

12. Thus, Noble Trust was operated as a Ponzi scheme that utilized fresh investment funds from its clients and the Commissions to pay fictitious profits to its existing investors, to return principal to investors and to fund limited recourse Premium Finance Loans. The Policies were an integral part of that scheme. Fleury Affidavit ¶ 11.

Summary of Settlement Agreement⁴

13. By its terms, the Liquidator and Penn Mutual agreed that the Settlement Agreement is subject to the entry of a final order by the Court approving the Settlement Agreement (the “Court Approval”). The Court Approval shall be deemed to occur on the date that such order shall have become non-appealable or, in the event of an appeal(s), on the date that it has been affirmed after all appeals therefrom have been exhausted.

14. Under the Settlement Agreement, the Policies shall be deemed to be void *ab initio*, and as a consequence thereof, no individual or entity shall have any rights with respect to the Policies.

⁴ Notwithstanding the recitation in this Motion of the terms of the Settlement Agreement, this is a summary only and all parties in interest are urged to read the Settlement Agreement. In the event of any conflicts or inconsistencies between the summary contained in the Motion and the terms of the Settlement Agreement, the terms of the Settlement Agreement shall control.

15. The Settlement Agreement provides that Penn Mutual shall pay the Liquidator a litigation settlement payment. The Settlement Agreement requires that the amount of the settlement payment be kept confidential.

16. Penn Mutual and the Liquidator shall release each other from all claims in connection with, arising out of, or in any way related to the subject matter of the Policies. The Liquidator and Penn Mutual acknowledge that the release does not constitute a release of any claims against any other person or entity, including Lindsey, Balcarres, or any Third Party (defined below).

17. By this Motion, and as provided for in the Settlement Agreement, the Court Approval shall bar any and all third parties (including, but not limited to, all insureds, all settlors and beneficiaries of the Trusts, and any and all lenders or other persons or entities claiming an interest in the Policies (collectively “Third Parties”)) from pursuing claims against Penn Mutual or the Liquidator related in any way to the Policies, the Trusts, the Settlement Agreement, or the Liquidation Proceeding. The Court Approval shall further bar Third Parties from pursuing claims against Penn Mutual or the Liquidator asserted by, through, or under the Trusts.

18. The termination/voiding of the Policies shall be free and clear of all liens, claims and interests in any of the Policies of any kind or nature whatsoever held by any individual or entity. All such liens, claims and interests against any of the Policies shall be subject to allowance or disallowance as part of the claims adjudication process in the Liquidation Proceeding, including under the Amended Plan of Liquidation as Modified dated October 7, 2014 (the “Plan”), which was approved by order of the Court on October 7, 2014 and became a final order on November 7, 2014.

The Liquidator Has the Authority To Terminate the Policies

19. Noble Trust is trustee of the Trusts, which own the Policies. Under the terms of the Liquidation Order and as further provided under the Plan, the Liquidator is authorized and directed to take control of all Noble Trust's assets, *specifically* including life insurance policies held in trusts as to which Noble Trust is trustee, and to preserve and liquidate them for the benefit of Noble Trust's clients and creditors. The Liquidation Order provides that, "The Liquidator is directed forthwith to take possession of and secure the assets, property, books, records, accounts, and other documents of [Noble Trust], Balcarres, and Aegean Scotia and to administer them under the orders of this Court, and is vested with exclusive possession, custody and control of all of the property . . . of [Noble Trust], Balcarres and Aegean Scotia, wherever located and by whomever possessed . . ." Id. at 3, ¶ (d). The Liquidation Order expressly provides that, for purposes of the Noble Trust liquidation, Noble Trust shall include "all sub-trusts and protected trusts in which [Noble Trust] holds an interest, whether directly or indirectly." Id. at 3, ¶ (b). The Liquidator is also "authorized to transfer, invest, re-invest and otherwise deal with the assets and property of [Noble Trust] and Aegean Scotia as to effectuate their liquidation" Id. at 3, ¶ (e).⁵

20. The Liquidator's authority under the Liquidation Order was reaffirmed in the Plan. Under the Plan, Insurance Policies are defined as:

any and all life insurance policies, annuities, and other similar contracts or instruments in which Noble Trust holds any legal or equitable interest, including but not limited to those issued for the direct or indirect benefit of a Client with respect to which Noble Trust provided trust or administrative services, whether such Insurance Policies are held in a trust, subtrust, or any other form of ownership

⁵ The Liquidator is not acting as trustee, co-trustee, or trust protector for any of the trusts or sub-trusts established by Noble Trust for its clients. Neither the Plan nor the Liquidation Order confers that status on the Liquidator, and the Liquidator has not sought that status except upon motion to this Court for specified purposes.

Plan at § 1.14. The Plan authorizes the Liquidator to “negotiate the liquidation or disposition of Noble Trust’s interests in Insurance Policies with the respective issuers thereof, either by surrender, rescission or such other manner as the Liquidator deems appropriate.” Plan at § 2.3(B).

21. Legal title to the Policies and other insurance policies rests in Noble Trust and, therefore, the policies are property of Noble Trust within the meaning of the Liquidation Order and Plan. The Policies are held in such trusts, and, therefore, the Liquidator is authorized and directed to exercise control over the Policies.

22. The Liquidation Order *specifically* identified life insurance policies held by Noble Trust as trustee as property of Noble Trust and forbids third parties from exercising control over that property:

[A]ll persons are hereby permanently enjoined and restrained from . . . any act to obtain possession of property of NTC, Balcarres, or Aegean Scotia, or to exercise control over property of those entities, including, without limitation, any act to terminate, cancel, revoke, void or otherwise alter any policies of insurance (i) issued to or for the benefit of NTC or any of its clients, or (ii) in which either NTC, Balcarres, or Aegean Scotia holds an interest (including as trustee, protector, or as property of a sub-trust), or (iii) which were issued through Balcarres for the benefit of NTC's clients; unless such termination, cancellation, revocation or alteration shall have been first approved by either the Liquidator or this Court

Id. at 4-5, ¶ (j)(3). Moreover, the Order Clarifying Order Appointing Liquidator entered by this Court on June 10, 2008, makes clear that: "The Liquidation Order is intended and means to prevent and enjoin the Policies . . . from lapsing for nonpayment or nonperformance of any obligation due, overdue, or becoming due thereunder" Under the Plan, these injunctive provisions were continued and made permanent. Plan at § 4.6.

23. The Liquidator's treatment of the Policies in the Settlement Agreement is consistent with prior settlement agreements approved by this Court and, more generally, the

treatment of assets that remain in a Ponzi scheme when the scheme is discovered and terminated. Courts in Ponzi scheme cases uniformly endorse the pooling of assets and pro rata distribution where "the funds of the defrauded victims were commingled and where victims were similarly situated with respect to their relationship to the defrauders." Kathy Bazoian Phelps & Steven Rhodes, The Ponzi Book: A Legal Resource for Unraveling Ponzi Schemes § 6.05[1][b] (2012) (quoting S.E.C. v. Credit Bancorp, Ltd., 290 F.3d 80, 88-89 (2d Cir. 2002)); see also Cunningham v. Brown, 265 U.S. 1, 13 (1924); U.S. v. Durham, 86 F.3d 70, 72 (5th Cir. 1996); Hirsch v. Arthur Anderson & Co., 72 F.3d 1085, 1088 n.3 (2d Cir. 1995); S.E.C. v. Elliott, 953 F.2d 1560, 1569 (11th Cir. 1992); S.E.C. v. Byers, 637 F.Supp.2d 166, 179-80 (S.D.N.Y. 2009); Jobin v. Youth Benefits Unlimited (In re M&L Bus. Mach. Co.), 164 B.R. 148, 151 (D. Colo. 1994); Gaffney v. Rubino (In re Builders Capital & Servs., Inc.), 317 B.R. 603, 611 (Bankr. W.D.N.Y. 2004); Henderson v. Allred (In re W. World Funding, Inc.), 54 B.R. 470, 475-76 (Bankr. D. Nev. 1985). Courts have deemed these equitable principles "especially appropriate for fraud victims of a 'Ponzi scheme' In such a scheme, whether at any given moment a particular customers' assets are traceable is 'a result of the merely fortuitous fact that the defrauders spent the money of other victims first.'" Credit Bancorp, 290 F.3d at 89 (internal citations omitted). Such cases "call strongly for the principle that equality is equity" Cunningham, 265 U.S. at 13.

24. Courts in Ponzi scheme liquidations and receiverships have applied the principle of pooling even where a claimant can identify its asset among the property of the estate. For instance, in S.E.C. v. Elliott, investors in a Ponzi scheme transferred identifiable securities to the Ponzi perpetrator. Prior to the receivership, the perpetrator sold some, but not all, of the securities. The investors objected to the pooling and ratable distribution of their identifiable

securities, but the trial court approved the receiver's plan and the Eleventh Circuit affirmed, holding that:

These investor/appellants are attempting to recover the securities that Elliott retained with their names on them. Legally, these investors occupy the same position as the other investors whose securities were sold. All investors were defrauded. All investors were cleverly persuaded to part with their securities. . . . "To allow any individual to elevate his position over that of other investors similarly 'victimized' by asserting claims for . . . reclamation of specific assets . . . would create inequitable results, in that certain investors would recoup 100% of their investment while others would receive substantially less. . . . [I]n the context of this receivership the remedy . . . to trace and reclaim specific assets . . . is disallowed as an inappropriate equitable remedy." We cannot say that the district court abused its discretion A district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership. . . . [S]ince these creditors occupied the same legal position as other creditors, equity would not permit them a preference; for "equality is equity."

S.E.C. v. Elliott, 953 F.2d at 1569-70 (internal citations omitted). Similarly, in Credit Bancorp., the Second Circuit considered "whether shares of stock transferred to a company that defrauded the transferor and numerous other victims can be included in the receivership estate of the defrauding company for purposes of a *pro rata* distribution to the defrauded victims." Credit Bancorp., 290 F.3d at 82. The court noted that the particular investor's "claim is distinguishable from that of many of CBL's customers only in that the eight million Vintage Petroleum shares it deposited were not converted into cash and are currently being held in CBL's brokerage accounts." Id. at 85. The court then rejected the investor's arguments for reclamation and affirmed the district court's distribution scheme:

[W]hatever . . . interest [the investor] might have in the . . . shares . . . does not defeat the equitable authority of the District Court to treat all the fraud victims alike . . . and order a *pro rata* distribution. Courts have favored *pro rata* distribution of assets where, as here, the funds of the defrauded victims were commingled and where victims were similarly situated with respect to their relationship to the defrauders. . .

Id. at 89 (internal citations omitted).

25. The fact that the Policies were held in trusts does not alter the Liquidator's authority to deal with the policies or the appropriateness of his proposed exercise of that authority. As noted above, the Plan and Liquidation Order make clear that the Policies are property of Noble Trust to be administered by the Liquidator. The Plan itself brings property held in trust into the Noble Trust liquidation estate. Moreover, the Trust, and the other irrevocable life insurance trusts that were formed to hold the high value life insurance policies procured by Noble Trust, were a critical part of the Noble Trust Ponzi scheme. A trust may be unenforceable where its purpose is fraudulent, illegal, or contrary to public policy. 2 Austin Scott, William Fratcher & Mark Ascher Scott and Ascher on Trusts § 9.1 at 468-71 (5th ed. 2006). "[C]ourts have held a large . . . group of trusts . . . invalid[] on the ground that their enforcement would violate public policy." Id. § 9.3 at 472; see also Restatement (Second) of Trusts § 62 (1959); Restatement (Third) of Trusts § 29(c) (2003). The New Hampshire Legislature has recognized that trusts may be put to an improper purpose with respect to so-called Stranger-originated life insurance. RSA 408-D: XVI provides: "Trusts that are created to give the appearance of insurable interest and are used to initiate policies for investors violate insurable interest laws and the prohibition on wagering on life."

26. As a general matter, the interests of public policy obviously include discouraging fraudulent activity. Giving effect to the insurance trusts, which themselves were a central element of the Noble Trust Ponzi scheme, would promote and perpetuate, rather than discourage, Noble Trust's fraud. Moreover, as described above, in the context of Ponzi schemes, public policy and sound equitable principles also demand the pooling of assets for pro rata distribution to similarly situated creditors. There is ample legal precedent supporting the authority of courts in Ponzi scheme cases to ignore the existence of separate legal entities in order to ensure a fair

distribution to all claimants. See, e.g., S.E.C. v. Funding Res. Grp., 233 F.3d 575 (5th Cir. 2000); Marchese v. Leverage Grp., 2009 U.S. Dist. LEXIS 13318 (E.D.N.Y. Feb. 20, 2009); In re Burton Wiand Receivership Cases, 2008 U.S. Dist. LEXIS 27929 (M.D. Fla. Mar. 26, 2008); In re Nat'l Century Fin. Enters., Inc., Inv. Litig., 2006 U.S. Dist. LEXIS 16612 (S.D. Ohio Feb. 27, 2006); Fid. Nat'l Title Ins. Co. of NY v. Intercounty Nat'l Title, 2002 U.S. Dist. LEXIS 16002 (N.D. Ill. July 8, 2002).

27. This Court also possesses broad power to grant relief as a court of equity. See RSA 498:1; see also Boynton v. Figueroa, 154 N.H. 592, 608 (2006) (holding that the court has "broad and flexible equitable powers which allow it to shape and adjust the precise relief to the requirements of the particular situation."). The statute governing bank liquidations further supplements this equitable power. See RSA 395:2 (court may issue orders "as equity may require"); see also In re Liquidation of The Home Ins. Co., 154 N.H. 472, 482, 488, 490 (2006) (discussing equitable powers in context of bank liquidation); 1 Ralph E. Clark, The Law and Practice of Receivers § 258 (3d ed. 1959) (discussing equitable powers of receivers generally). Courts' equitable powers with respect to insolvent estates are "invoked to the end that fraud will not prevail, that substance will not give way to form, that technical considerations will not prevent substantial justice from being done." Pepper v. Litton, 308 U.S. 295, 305 (1939). Strictly applying trust principles in this case so as to deny the Liquidator the ability to deal with the Policies would elevate form over substance and prevent substantial justice from being accomplished.

28. In the absence of the Settlement Agreement, the Liquidator would seek to have the Policies declared void and to compel Penn Mutual to return to the liquidation estate of Noble Trust the premiums paid on account of the Policies. Penn Mutual would seek a ruling that the Policies were not properly included within the liquidation estate and that the Liquidator has no

valid interests in any of the Policies. Penn Mutual would also contend that it was not required to return any of the premiums to the Liquidator due to the equitable offset of its claims arising from the substantial commissions it paid in connection with the Policies, and further assert that courts have permitted insurers to void policies procured through fraud or that lack a valid insurable interest without requiring the insurer to refund premiums. Penn Mutual would also assert the right to impose various charges, expenses and other costs provided for under the Policies that would reduce the amount of premiums that it would be required to return in any event, even without respect to its claim of setoff. The Liquidator would dispute the merits of these legal theories.

29. The Liquidator and Penn Mutual believe the Settlement Agreement is fair, reasonable and adequate, and is the result of arms-length negotiations between the parties and their counsel. The Settlement Agreement will result in the payment of a material sum to the estate by Penn Mutual. Therefore, the Settlement Agreement maximizes the value of the liquidation of Noble Trust by creating a fund that will be available to claimants of the estate, subject to further order of this Court, relieving the estate of further costs and from the potential risk of litigation with Penn Mutual.

30. The Liquidator therefore believes that entering into the Settlement Agreement is an appropriate and prudent exercise of the Liquidator's judgment, and that the settlement resolves the pending dispute between the Liquidator and Penn Mutual on terms that are advantageous to the liquidation of Noble Trust and Noble Trust creditors.

31. Accordingly, the Liquidator believes that approval of the Settlement Agreement is in the best interests of Noble Trust, its creditors, and all parties in interest. See In re Liquidation of The Home Ins. Co., 154 N.H. 472, 489-90 (2006).

Filing and Service of Objections

32. Objections to this motion, if any, must be in writing and filed with the Clerk of the Court (Office of the Clerk, Merrimack County Superior Court, 163 North Main Street, Concord, New Hampshire, 03302), and served upon the following parties so as to be actually received on or before the objection deadline imposed by the Court; *i.e.* any objections filed with the Court must also be either hand delivered to counsel or, if served by mail, then also transmitted electronically to counsel that same day:

- (a) attorneys for the Liquidator: (i) Office of the Attorney General, 33 Capitol Street, Concord, New Hampshire 03301-6397, Attn.: Peter C.L. Roth, Esq., fax: (603) 223-6269, email: peter.roth@doj.nh.gov, and (ii) Sheehan Phinney Bass + Green Professional Association, 1000 Elm Street, P.O. Box 3701, Manchester, New Hampshire, 03105-3701, Attn.: Christopher M. Candon, Esq., fax: (603) 627-8121, email: ccandon@sheehan.com;
- (b) attorneys for Penn Mutual: Edison, McDowell & Hetherington LLP, Phoenix Tower, 3200 Southwest Freeway, Suite 2100, Houston, Texas 77027, Attn.: Jarrett E. Ganer, Esq., fax: (713) 337-8845, email: jarrett.ganer@emhllp.com; and
- (c) counsel of record in this proceeding (whose names and addresses may be obtained from the Clerk's Office).

WHEREFORE, the Liquidator requests that the Court (i) enter an order, in substantially the same form submitted herewith as Exhibit B, granting the Motion and approving the Settlement Agreement, and (ii) grant the Liquidator such other and further relief as is just.

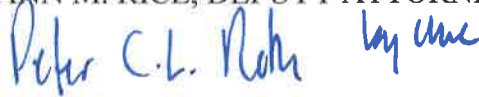
Respectfully submitted,

Dated: July 27, 2015

GLENN A. PERLOW, BANK COMMISSIONER
OF THE STATE OF NEW HAMPSHIRE,
AS LIQUIDATOR OF NOBLE TRUST COMPANY

By his attorneys,

ANN M. RICE, DEPUTY ATTORNEY GENERAL



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EXHIBIT A

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

**Docket No. 08-E-0053
In the Matter of the Liquidation of
Noble Trust Company**

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is entered into as of the 17th Day of July, 2015 (the “Effective Date”) by and between Penn Mutual Life Insurance Company (“Penn Mutual”), and Glenn A. Perlow, Bank Commissioner of the State of New Hampshire, as duly appointed Liquidator (the “Liquidator”) for Noble Trust Company (“NTC”) and Aegean Scotia Holdings, LLC (“Aegean”) (Penn Mutual and the Liquidator being collectively referred to herein as the “Parties” and each individually a “Party”).

RECITALS

WHEREAS, prior to the commencement of the above-captioned liquidation proceeding (the “Liquidation Proceeding”), NTC was appointed and served as Trustee under certain trust agreements formed by or at the direction of NTC, including the trusts defined in Schedule “A,” all of which are collectively referred to hereinafter as the “Trusts.”

WHEREAS, prior to the commencement of the Liquidation Proceeding, each Trust, through its trustee, applied in writing to Penn Mutual for the issuance of life insurance policies insuring the lives of certain individuals, and Penn Mutual issued the policies defined in Schedule “B,” all of which are collectively referred to hereinafter as the “Policies.”

WHEREAS, on February 11, 2008, Peter C. Hildreth, Bank Commissioner of the State of New Hampshire, filed with the Superior Court for Merrimack County, New Hampshire (the

“Liquidation Court”) his Verified Petition for Liquidation of NTC, and appointed Robert A. Fleury, Deputy Bank Commissioner of the State of New Hampshire, as Conservator for NTC.

WHEREAS, on March 31, 2008, this Court entered its Order Appointing Liquidator (the “Liquidation Order”), pursuant to which the Liquidator was vested with certain rights and powers concerning NTC (and all sub-trusts and protected trusts in which it holds an interest, either directly or indirectly), including “exclusive possession, custody and control of all of the property, contracts and rights of action and all of the books and records of NTC, . . . wherever located and by whomever possessed.”¹ The Liquidation Order further provided the Liquidator with “all of the powers of the officers and managers of NTC.”

WHEREAS, the Liquidator is aware that one or more entities may claim security or other interests in the Policies, including by virtue of having claimed to have made premium finance loans to trusts or sub-trusts formed by or at the direction of NTC, and that NTC may not have disclosed some or any of such transactions to Penn Mutual.

WHEREAS, Colin P. Lindsey (“Lindsey”) was a principal of NTC and, individually or through his affiliated entity Balcarres Group LLC (“Balcarres”), acted as a broker or producer in connection with certain of the Policies.

WHEREAS, the Liquidator has asserted claims and obtained civil judgments against Lindsey and Balcarres arising, in part, from their acts and conduct in connection with one or more of the Policies.

¹ On February 1, 2013, Glenn A. Perlow was appointed by order of the Liquidation Court the successor Liquidator of NTC.

WHEREAS, in connection with the issuance of the Policies, Penn Mutual paid commissions to Lindsey and others totaling \$2,083,959.00, and NTC paid premiums to Penn Mutual in the amount of \$2,315,700.00.

WHEREAS, the Parties each have claims arising against each other arising from and relating to the Policies, and desire to settle and compromise their claims against each other in the manner set forth herein, in order to avoid the considerable time, expense, resources and uncertainties that protracted litigation of such claims would entail.

AGREEMENT

NOW, THEREFORE, based on the above-referenced recitals and in consideration of the promises and of the mutual covenants herein contained, the Parties hereto, intending to be legally bound, hereby agree as follows:

1. The Parties agree that this Agreement is subject to the entry of a final order by the Liquidation Court in the Liquidation Proceeding approving this Agreement (the "Court Approval"). The Court Approval shall be deemed to occur on the date that such order shall have become non-appealable or, in the event of an appeal, has been affirmed after all appeals therefrom have been exhausted.

2. The Court Approval shall bar any and all third parties (including, but not limited to, all insureds, all settlors and beneficiaries of the Trusts, and any and all lenders or other persons or entities claiming an interest in the Policies (collectively "Third Parties")) from pursuing claims against Penn Mutual or the Liquidator related in any way to the Policies, the Trusts, this Agreement, or the Liquidation Proceeding. The Court Approval shall further bar Third Parties from pursuing claims against Penn Mutual or the Liquidator asserted by, through, or under the Trusts. The surrender and/or termination of the Policies shall be free and clear of all

liens, claims and interests in the Policies of any kind or nature whatsoever held by an individual or entity. All such liens, claims, and interests against the Policies shall be subject to allowance or disallowance as part of the approved claims adjudication process in the Liquidation Proceeding, including under the Amended Plan of Liquidation as Modified dated October 7, 2014, which was approved by the Court on October 7, 2014 and became a final order on November 7, 2014.

3. The Liquidator agrees to file all necessary pleadings and provide appropriate notices to obtain entry of the Court Approval as soon as possible and the Parties acknowledge that time is of the essence.

4. The Liquidator and Penn Mutual agree that the Policies shall be deemed to be hereby , canceled, terminated and otherwise voided *ab initio* as though the Policies were never issued. The Liquidator and Penn Mutual agree that the Policies shall be deemed terminated and void *ab initio* as of the date of the Policies' issuance; that no further rights of recovery exist under the Policies, at law or in equity; that any and all rights under the Policies, aside from those expressly stated in this Settlement Agreement, shall be deemed released; and that both the Liquidator and Penn Mutual are deemed released from any and all claims or obligations under the Policies, to the extent that any such claims or obligations exist. The Liquidator and Penn Mutual further agree that in the event of the death of any insured under any Policy prior to Court Approval, no claim shall be submitted to Penn Mutual and no death benefits shall be payable under such Policy.

5. The Parties agree that the time by which Penn Mutual must assert any and all claims contesting any Policy under the Policy's terms and conditions (including a Policy's contestability provision) and/or NH RSA 408:10 shall be tolled until sixty (60) days after the

later of (a) Court Approval, (b) the denial of Court Approval; (c) or the date on which any appeal of the denial of Court Approval is exhausted. Regardless of approval or denial, in part or in whole, of this Agreement, the Parties agree to continue to work in good faith to toll contestability dates of any and all Policies for as long as the Policies are subject to the Liquidation Proceeding. Nothing within this section or this Agreement is intended to waive or compromise any legal argument that the contestability period of any Policy extends beyond the time period set forth in this paragraph.

6. Penn Mutual agrees to pay to the Liquidator the aggregate sum of [REDACTED] (the "Settlement Amount"). Penn Mutual shall deliver to the Liquidator the full amount of the Settlement Amount upon the Effective Date, which the Liquidator shall deposit in a separate, segregated account (the "Settlement Account") and hold for the benefit of Penn Mutual pending Court Approval; provided that if Court Approval does not occur, the Liquidator shall thereupon return the Settlement Amount to Penn Mutual, without setoff or deduction on account of any claim that the Liquidator or any Third Party may otherwise have against Penn Mutual or any other claim that is made in the Liquidation Proceeding. Upon Court Approval, the Settlement Amount shall be released from the Settlement Account and accepted by the Liquidator.

7. The Liquidator, in his capacity as Liquidator and on behalf of NTC (for itself and in any and all capacities in which it is named or has acted under any of the Trusts or in connection with any of the Policies), its representatives, parent organization, and their respective successors and assigns, hereby releases, acquits and discharges Penn Mutual, together with its directors, officers, employees, attorneys, agents, insurers, representatives, heirs, assigns, affiliates, predecessors, successors, related entities, and subsidiary and parent organizations from

and against any and all claims, demands, obligations, liabilities, and causes of action, of any nature whatsoever, at law or in equity, asserted or unasserted, known or unknown, relating in any way to the Policies. The Parties acknowledge that this release does not constitute a release of any claims against any other person or entity, including Lindsey, Balcarres, or any Third Party.

8. Penn Mutual, and its representatives, successors, and assigns hereby release, acquit and discharge the Liquidator and the Trusts, together with their directors, officers, employees, attorneys, agents, insurers, representatives, heirs, assigns, affiliates, predecessors, successors, related entities, and subsidiary and parent organizations from and against any and all claims, demands, obligations, liabilities, and causes of action, of any nature whatsoever, at law or in equity, asserted or unasserted, known or unknown, relating to the Policies except as set forth in this Agreement. The Parties acknowledge that this release does not constitute a release of any claims against any other person or entity, individually or acting in any capacity, including but not limited to Lindsey, Balcarres, or any Third Party.

9. No Party to this Agreement makes any acknowledgment or admission of any liability to any other Party to this Agreement.

10. The Parties acknowledge that neither they, nor anyone acting or purporting to act on their behalf, have made any representations nor warranties to the other as to any tax issues relating to the Policies or this Agreement.

11. This Agreement shall be governed and construed in accordance with the laws of the State of New Hampshire applicable to agreements made and to be wholly performed within that state, without regard to its conflicts of law provisions or the conflict of law provisions of any jurisdiction that would cause the application of any law other than that of the state of New Hampshire.

12. This Agreement, the settlement contained herein, and the terms thereof shall be confidential except for legal, regulatory, and accounting purposes. The Liquidator acknowledges that Penn Mutual may disclose the amount of the Settlement Amount as may be necessary or appropriate in connection with the administration of Penn Mutual's business, including in communications with reinsurers, the producers, its lawyers, accountants, auditors, and management. Among other things, Penn Mutual acknowledges that it will be necessary for the Liquidator to disclose this Agreement when filing with the Court the Motion defined in Paragraph 3 of this Agreement seeking the Approval Order. The Liquidator has obtained an order permitting this Agreement to be filed under seal as to the Settlement Amount paid as consideration for this Agreement, and that conditions disclosure of the amount of the Settlement Amount on compliance with such confidentiality obligations as set forth in the Court's Order Establishing Settlement Agreement Review Procedures dated December 5, 2012. The Liquidator acknowledges that Penn Mutual retains the right to pursue damages against the insureds and/or producers to the extent set forth in this Agreement. Penn Mutual agrees that, in any action to recover such damages, it will voluntarily disclose only the total amount of the Settlement Amount.

13. If, in an action by Penn Mutual to recover such damages and except as otherwise described herein, or in any other legal or regulatory action or proceeding, any person requests that Penn Mutual produce this Agreement, disclose the terms of this Agreement, or file this Agreement with the court, Penn Mutual agrees that, before producing or filing this agreement or disclosing any terms, and, in any event, within five (5) business days of receiving notice of the request, Penn Mutual will: (i) provide written notice to the Liquidator by facsimile to the Liquidator and to the Liquidator's counsel (the Office of the Attorney General of the State of

New Hampshire and Sheehan Phinney Bass + Green, PA), and cooperate with reasonable efforts by the Liquidator to prevent or limit such disclosure, production or filing; and (ii) request that any disclosure or production of this Agreement be subject to a confidentiality order and any filing of this Agreement be made under seal.

14. Similarly, should the Liquidator receive a request from any person or entity in connection with any legal or regulatory action or proceeding (other than filing the Motion or seeking the Approval Order), that the Liquidator produce this Agreement, disclose the terms of this Agreement, or file this Agreement with the court, the Liquidator agrees that, before producing or filing this Agreement or disclosing any terms of this Agreement in connection with any such request, and, in any event, within five (5) business days of receiving notice of the request, the Liquidator will: (i) provide written notice to Penn Mutual by facsimile to Penn Mutual's counsel, Edison, McDowell & Hetherington LLP, and cooperate with reasonable efforts by Penn Mutual to prevent or limit such disclosure, production or filing; and (ii) request that any disclosure or production be subject to a confidentiality order and any filing of this Agreement be made under seal.

15. Each Party represents that it has carefully read and fully understands all of the provisions of this Agreement, that it has been given the opportunity to fully discuss the contents of this Agreement with independent counsel of its choice and has done so, and that by executing the agreement, each Party relies entirely on its own judgment and the advice of its respective counsel and not upon any representation, statement or promise, not otherwise set forth in this Agreement, of any of the other Parties, their attorneys or other individual or entity, and that it is voluntarily and without duress entering into this Agreement.

16. This Agreement may be signed in counterparts that are provided to the other party by facsimile or by electronic mail transmission of a copy of the executed document (in .pdf or .tiff format), each of which shall be deemed an original, and all counterparts so executed shall constitute one Agreement binding on all of the Parties, notwithstanding that all of the Parties are not signatory to the same counterpart.

17. The language of all parts of the Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly construed for or against any Party. The Parties agree that this Agreement shall be deemed to have been jointly drafted for purposes of applying any rules of construction.

18. Each of the Parties represents to the other that its signature on this Agreement has been duly authorized, subject only to Court Approval.

19. Each party shall be responsible for its own attorneys' fees, actual costs of court and all other costs in connection with this Agreement.

20. This Agreement reflects the entire agreement between the Parties. The execution and delivery of this written Agreement supersedes any and all prior representations, negotiations or agreements pertaining to the subject matter herein. The Agreement may not be modified in any way except by written consent of authorized representatives of the Parties.

21. This Agreement and the covenants, obligations, undertakings, rights or benefits hereof shall be binding upon and shall inure to the benefit of the Parties hereto and their respective representatives, successors and assigns, including but not limited to, any successor liquidators of NTC and any successor trustees of the Trusts.

22. If, after Court Approval of this Agreement has been obtained, any part, term or provision of this Agreement is subsequently declared or determined by any Court or body of

competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity and enforceability of the remaining parts, terms or provisions shall not be affected thereby and said illegal, unenforceable or invalid part, term or provision shall not be deemed to be a part of this Agreement.

PENN MUTUAL LIFE INSURANCE COMPANY

By: *Susan T. Deakins*
Name: *Susan T. Deakins*
Title: *Executive Vice President, Chief Financial Officer*
Date: *July 17*, 2015

GLENN A. PERLOW

**Banking Commissioner of the State of New Hampshire,
As Liquidator of Noble Trust Company and Aegean Scotia Holdings, LLC**

Glenn A. Perlow, Bank Commissioner
of the State of New Hampshire, as Liquidator of
Noble Trust Company and Aegean Scotia Holdings, LLC

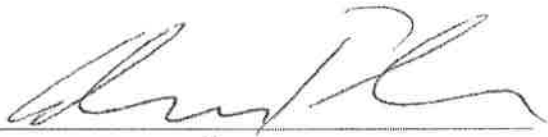
Date: _____, 2015

competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity and enforceability of the remaining parts, terms or provisions shall not be affected thereby and said illegal, unenforceable or invalid part, term or provision shall not be deemed to be a part of this Agreement.

PENN MUTUAL LIFE INSURANCE COMPANY

By: _____
Name: _____
Title: _____
Date: _____, 2015

GLENN A. PERLOW
Banking Commissioner of the State of New Hampshire,
As Liquidator of Noble Trust Company and Aegean Scotia Holdings, LLC



Glenn A. Perlow, Bank Commissioner
of the State of New Hampshire, as Liquidator of
Noble Trust Company and Aegean Scotia Holdings, LLC
Date: 7/16/15, 2015

SCHEDULE A

The following are collectively defined as the "Trusts:"

- 1) The 2006 Anthony Sica Irrevocable Trust dated 09/08/06 (the "Sica Trust");
- 2) Lupe Ruiz ILIT dated 11/28/2006 (the "Ruiz Trust");
- 3) The 2007 Harry Baker Irrevocable Trust dated 01/10/2007 (the "Baker Trust");
- 4) The 2006 Joy Kolb Irrevocable Trust dated 09/27/2006 (the "Kolb Trust");
- 5) The Sadie Bass Irrevocable Trust (the "Bass Trust");

SCHEDULE B

The following are collectively defined as the "Policies:"

- 1) The Sica Trust, through its trustee NTC, applied in writing to Penn Mutual for the issuance of a life insurance policy insuring the life of Anthony N. Sica. In response to this application, Penn Mutual issued policy number 8189442, with a policy date of December 28, 2006, to the Sica Trust (the "Sica Policy"). Penn Mutual's records reflect that the Sica Trust is the owner of the Sica Policy and that NTC is the trustee of the Sica Trust.
- 2) The Ruiz Trust, through its trustee NTC, applied in writing to Penn Mutual for the issuance of a life insurance policy insuring the life of Lupe Ruiz. In response to this application, Penn Mutual issued policy number 8191171, with a policy date of May 11, 2007, to the Ruiz Trust (the "Ruiz Policy"). Penn Mutual's records reflect that the Ruiz Trust is the owner of the Ruiz Policy and that NTC is the trustee of the Ruiz Trust.
- 3) The Baker Trust, through its trustee NTC, applied in writing to Penn Mutual for the issuance of a life insurance policy insuring the life of Harry O. Baker, Sr. In response to this application, Penn Mutual issued policy number 8192490, with a policy date of May 11, 2007, to the Baker Trust (the "Baker Policy"). Penn Mutual's records reflect that the Baker Trust is the owner of the Baker Policy and that NTC is the trustee of the Baker Trust.
- 4) The Kolb Trust, through its trustee NTC, applied in writing to Penn Mutual for the issuance of a life insurance policy insuring the life of Joy V. Kolb. In response to this application, Penn Mutual issued policy number 8190743, with a policy date of March 21, 2007, to the Kolb Trust (the "Kolb Policy"). Penn Mutual's records reflect that the Kolb Trust is the owner of the Kolb Policy and that NTC is the trustee of the Kolb Trust.
- 5) The Bass Trust, through its trustee NTC, applied in writing to Penn Mutual for the issuance of a life insurance policy insuring the life of Sadie E. Bass. In response to this application, Penn Mutual issued policy number 8190826, with a policy date of February 2, 2007, to the Bass Trust (the "Bass Policy"). Penn Mutual's records reflect that the Bass Trust is the owner of the Bass Policy and that NTC is the trustee of the Bass Trust.

EXHIBIT B

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 08-E-0053

**In the Matter of the Liquidation of
Noble Trust Company**

**ORDER APPROVING SETTLEMENT AND RELEASE AGREEMENT
WITH PENN MUTUAL LIFE INSURANCE COMPANY**

Upon consideration of the Liquidator's Motion and Incorporated Supporting Memorandum for Approval of Settlement and Release Agreement with Penn Mutual Life Insurance Company dated July 27, 2015 (the "Motion") pursuant to which Glenn A. Perlow, Bank Commissioner for the State of New Hampshire, in his capacity as Liquidator of Noble Trust Company (the "Liquidator" and "Noble Trust," respectively), seeks approval of a Settlement and Release Agreement by and between the Liquidator and Penn Mutual Life Insurance Company (the "Settlement Agreement"); due written notice of the Motion, the hearing on the Motion and the deadline for filing objections thereto having been given and served upon all creditors, investors, and other interested persons entitled thereto, including by publication in the manner specified by this Court's Order Approving Notice and Objection Procedures for Hearing on Motion for Approval of Settlement and Release Agreement with Penn Mutual Life Insurance Company dated _____, 2015 (the "Procedures Order"); this Court having reviewed the Motion, the Affidavit of Robert A. Fleury in Support of the Motion and the unredacted Settlement Agreement filed under seal in accordance with this Court's Order Establishing Settlement Agreement Review Procedures dated December 5, 2012; there being no objections to the Motion; having heard the arguments and statements of counsel, and being otherwise fully advised in the premises; and having found that approval of the Settlement

Agreement is an appropriate and prudent exercise of the Liquidator's judgment, is fair and reasonable and is in the best interests of this estate and its creditors; and, after due deliberation and sufficient cause appearing therefor; it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted, and the Settlement Agreement is approved. The Liquidator, Penn Mutual Life Insurance Company ("Penn Mutual") and all other parties are authorized to take all steps and execute all documents necessary or convenient to consummate or otherwise enter into the Settlement Agreement. Neither the Liquidator nor Penn Mutual shall have or incur any liability to any person or entity with respect to any of the actions required or permitted to implement the Settlement Agreement or for having entered into the Settlement Agreement.

2. Having complied with the Procedures Order, the Liquidator has provided adequate and sufficient notice to investors, creditors, and any and all other interested persons whose interests may be affected by the approval and implementation of the Settlement Agreement, of the hearing on the Motion, the issues to be decided at the hearing, and the deadline for filing objections. Accordingly, the Liquidator has complied with all applicable requirements of due process with respect to the Motion and the relief requested therein.

3. The Settlement Agreement shall not become effective unless and until this order becomes final. This order each shall become final on the date that it is no longer subject to appeal, or in the event of an appeal(s), has been affirmed after all appeals therefrom have been exhausted ("Court Approval").

4. The Policies¹ are hereby void *ab initio*, and no individual or entity shall have any rights with respect to the Policies, at law or in equity.

5. Penn Mutual has paid to the Liquidator a confidential settlement amount (the "Settlement Amount"), which the Liquidator has deposited in a separate, segregated account (the "Settlement Account") pending Court Approval. If Court Approval does not become effective, the Liquidator shall thereupon return the Settlement Amount to Penn Mutual, without setoff or deduction on account of any claim that the Liquidator or any Third Party may otherwise have against Penn Mutual or any other claim that is made in the Liquidation Proceeding. Upon Court Approval, the Settlement Amount shall be released from the Settlement Account and accepted by the Liquidator.

6. All releases by and between the Liquidator and Penn Mutual provided for in the Settlement Agreement are approved, which releases are binding upon Third Parties. The releases do not constitute a release of any claims against any other person or entity, including Lindsey, Balcarres, or any Third Party.

7. Any and all Third Parties are forever barred from pursuing claims against Penn Mutual or the Liquidator related in any way to the Policies, the Trusts, the Settlement Agreement, or the Liquidation Proceeding. Without limiting the foregoing bar of claims, Third Parties are forever barred from pursuing claims against Penn Mutual or the Liquidator asserted by, through, or under the Trusts.

8. The termination/voiding of the Policies shall be free and clear of all liens, claims and interests in any of the Policies of any kind or nature whatsoever held by any individual or entity. All such liens, claims and interests against any of the Policies shall be subject to

¹ Capitalized terms used in this Order and not otherwise defined herein are intended to have the same meaning as ascribed to them in the Settlement Agreement and/or the Motion.

allowance or disallowance as part of the claims adjudication process in the Liquidation Proceeding, including under the Amended Plan of Liquidation as Modified dated October 7, 2014, which was approved by order of the Court on October 7, 2014 and became a final order on November 7, 2014.

9. The Liquidator is authorized to utilize the Policy documents as evidence in the course of administering any claim against the liquidation estate in connection with the Policies. Any such use by the Liquidator of the Policy documents will not impact the fact that the Policies have been terminated and are void *ab initio*.

So Ordered.

Dated: _____, 2015

Hon. Larry M. Smukler